

REMARKS/ARGUMENTS

Claims 1-38 are pending in the application. The Examiner has rejected claims 1-15. The Examiner has allowed claims 16-38. Applicant respectfully requests reconsideration of pending claims 1-15.

The Examiner has rejected claims 1-15 under 35 U.S.C. § 101, as allegedly being directed to non-statutory subject matter. Applicant respectfully disagrees. Regarding claims 1-15, the Examiner states, "There is no limitation in any of claims 1-15 that even suggest that any hardware is required to carry out the limitations in claims 1-15 because error detection codes such as parity word can be generated using a generator matrix." The Examiner concludes, "Hence claims 1-15 are non-statutory and be carried out by hand or in a computer program." The Examiner also states, "Further the claims are directed towards software per se and lacks the program steps as being stored in a medium which enables the functionality of the instructions to be executed."

Applicant submits the rejection of claims 1-15 appears not to comport with Office practice, and appears to lack a basis in statute or case law. Applicant notes MPEP § 2106 pertains to Patent Subject Matter Eligibility and states, in part, "These Interim Guidelines for Examination of Patent Applications for Patent Subject Matter Eligibility ("Guidelines") are to assist examiners in determining, on a case-by-case basis, whether a claimed invention is directed to statutory subject matter." MPEP § 2106 further states, "The Guidelines *>set forth< the procedures *>USPTO< personnel will follow when examining applications **>. USPTO< personnel are to rely on these Guidelines in the event of any inconsistent treatment of issues between these Guidelines and any earlier provided guidance from the **>USPTO." Applicant does not see any evidence that the Examiner has complied with MPEP § 2106 in rejecting claims 1-15.

Firstly, Applicant submits the Examiner does not appear to state a basis in statute, case law, or Office procedure for the Examiner's statement that "There is no limitation in any of claims 1-15 that even suggest that any hardware is required to carry out the limitations in claims 1-15 because error detection codes such as parity word can be generated using a generator matrix." Applicant notes 35 U.S.C. § 101 states, "Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor,

subject to the conditions and requirements of this title." Applicant further notes MPEP § 2106, citing as legal authority *Alappat*, 33 F.3d at 1542, 31 USPQ2d at 1556, states, in part, the following:

"The plain and unambiguous meaning of section 101 is that any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may be patented if it meets the requirements for patentability set forth in Title 35, such as those found in sections 102, 103, and 112. The use of the expansive term "any" in section 101 represents Congress's intent not to place any restrictions on the subject matter for which a patent may be obtained beyond those specifically recited in section 101 and the other parts of Title 35.... Thus, it is improper to read into section 101 limitations as to the subject matter that may be patented where the legislative history does not indicate that Congress clearly intended such limitations.

Applicant submits claims 1-15 are method claims, properly reciting a new and useful process in accordance with 35 U.S.C. § 101. Thus, Applicant submits claims 1-15 are in condition for allowance.

Secondly, Applicant submits the Examiner does not appear to state a basis in statute, case law, or Office procedure for the Examiner's statement that "Hence claims 1-15 are non-statutory and be carried out by hand or in a computer program." Applicant notes the Office issues many patents that may "be carried out by hand or in a computer program." As a few examples of issued patents that may "be carried out by hand," Applicant notes United States Patent No. 5,498,162, issued to Schaefer, for a "Method for Demonstrating a Lifting Technique;" United States Patent No. 6,368,227, issued to Olson, for a "Method of Swinging on a Swing;" and United States Patent No. 6,607,418, issued to Henry, for a "Discovery Toy and Method of Use." Applicant notes the Examiner is apparently assigned to Technology Center 2100, entitled "Computer Architecture, Software, and Information Security," so Applicant assumes the Examiner is not unaware that the Office issues patents that may "be carried out...in a computer program," and that, in issuing such patents, the Office presumably considers the claims of such patents to be statutory subject matter. Moreover, Applicant notes claims 1-15 do not contain a limitation that the method "be carried out by hand or in a computer program." Thus, Applicant submits the claims 1-15 are in condition for allowance.

Thirdly, Applicant submits the Examiner does not appear to state a basis in statute, case law, or Office procedure for the Examiner's statement that ""Further the claims are directed towards software per se and lacks the program steps as being stored in a medium which enables the functionality of the instructions to be executed." Applicant notes the Examiner appears to be attempting to characterize claims 1-15 under MPEP § 2106.01, entitled "Computer-Related Nonstatutory Subject Matter." However, Applicant notes MPEP § 2106.01 states, in part, the following:

****>**Descriptive material can be characterized as either "functional descriptive material" or "nonfunctional descriptive material." In this context, "functional descriptive material" consists of data structures and computer programs which impart functionality when employed as a computer component. (The definition of "data structure" is "a physical or logical relationship among data elements, designed to support specific data manipulation functions." The New IEEE Standard Dictionary of Electrical and Electronics Terms 308 (5th ed. 1993).) "Nonfunctional descriptive material" includes but is not limited to music, literary works, and a compilation or mere arrangement of data.

Both types of "descriptive material" are nonstatutory when claimed as descriptive material *per se*, 33 F.3d at 1360, 31 USPQ2d at 1759.

However, Applicant submits claims 1-15 do not recite "descriptive material *per se*," either "functional" or "nonfunctional." Rather, as Applicant has noted above, claims 1-15 are method claims, properly reciting a new and useful process in accordance with 35 U.S.C. § 101. Thus, Applicant submits claims 1-15 are in condition for allowance.

For the foregoing reasons, Applicant submits the Examiner has failed to make a *prima facie* showing of claims 1-15 allegedly being non-statutory as allegedly failing to comply with 35 U.S.C. § 101. Accordingly, Applicant submits claims 1-15 are in condition for allowance.

In conclusion, Applicant has overcome all of the Office's rejections, and early notice of allowance to this effect is earnestly solicited. If, for any reason, the Office is unable to allow the Application on the next Office Action, and believes a telephone interview would be helpful, the Examiner is respectfully requested to contact the undersigned attorney.

Respectfully submitted,

Date

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